

No. 13014

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United States  
Court of Appeals  
For the Ninth Circuit.

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HENRY T. TANIMURA,

Appellant.

VS.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
Northern District of California,  
Southern Division.

FILED

SEP 7 1951

PAUL E. O'BRIEN  
CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

LANGE & ROCKWELL,  
CLYDE R. ROCKWELL,

Attorneys for Defendant and Appellant.

SIDNEY FEINBERG,  
WILLIAM B. SPOHN,

Attorneys for Plaintiff and Appellee.





United States District Court for the Northern  
District of California, Southern Division

No. 29527

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY T. TANIMURA, CHARLES S. LEE, and  
CAROL W. LEE,

Defendants.

COMPLAINT FOR INJUNCTION, RESTI-  
TUTION AND TREBLE DAMAGES

Count I.

1. In the judgment of the Housing Expediter, the defendants have engaged in acts and practices which constitute violations of Section 4 of the Emergency Price Control Act of 1942, as amended (50 U.S.C.A. Appendix Section 904).

2. Jurisdiction of this action is conferred upon this Court by Sections 1(b), 205(a) and 205(c) of said Emergency Price Control Act of 1942, as amended.

3. At all times mentioned herein defendants were the landlords of and rented certain controlled housing accommodations located within the San Francisco Bay Defense-Rental Area, described as No. 1550 Fillmore Street, in the City and County of San Francisco, California.

4. Prior to July 1, 1947, there has been in full

force and effect pursuant to said Emergency Price Control Act of 1942, as amended, the Rent Regulations issued pursuant to said Act, establishing a maximum rental for the use and occupancy of housing and rental accommodations within the defense-rental area in which the premises referred to in paragraph 3 of Count I above are located.

5. Prior to July 1, 1947, defendants demanded, accepted or received from tenants occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations, as appears more fully in Items 1(a) through 1(h) of Schedule marked Exhibit "A" attached hereto and by reference incorporated herein.

6. Prior to July 1, 1947, defendants demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises, rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the names of which tenants or the premises involved being presently unknown to the Plaintiff.

### Count II.

1. Plaintiff incorporates herein by reference the allegations in Paragraph 3 of Count I of his Complaint herein.

2. In the judgment of the Housing Expediter, the defendants have engaged in acts and practices which constitute violation of Section 206(a) of the

Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. 1881-1906; Public Law 31, 81st Congress, 1st Session).

3. Jurisdiction of this action is conferred upon this Court by Sections 206(b) and 206(c) of said Housing and Rent Act of 1947, as amended.

4. Since July 1, 1947, there has been in full force and effect pursuant to said Housing and Rent Act of 1947, as amended, the Rent Regulations issued pursuant to said Act, establishing a maximum rental for the use and occupancy of housing and rental accommodations within the defense-rental area in which the premises referred to in Paragraph 3 of Count I above are located.

5. Since July 1, 1947, defendant demanded, accepted or received from tenant occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations, as appears more fully in Items 2(a) through 2(s) of Schedule marked Exhibit "A" attached hereto and by reference incorporated herein.

6. Since July 1, 1947, defendants demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the names of which tenants or the premises involved being presently unknown to the Plaintiff.

## Count III.

1. Plaintiff incorporates herein by reference the allegations in Paragraph 3 of Count I and Paragraph 4 of Count II of his Complaint herein.

2. Jurisdiction of this action is conferred upon this Court by Sections 205 and 206(c) of said Housing and Rent Act of 1947, as amended.

3. Since July 1, 1947, and within one (1) year prior to the date of the commencement of this action (exclusive of the thirty (30) day period immediately prior to the date of the commencement of this action) to wit: between March 1, 1949, and January 15, 1950, defendants demanded, accepted or received from tenants occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations as appears more fully in Items 3(a) through 3(m) inclusive, of Schedule marked Exhibit "A" attached hereto and by reference incorporated herein.

4. Since July 1, 1947, and within one (1) year prior to the date of the commencement of this action (exclusive of the thirty (30) day period immediately prior to the date of the commencement of this action) defendants have demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the names of which tenants or the premises involved being presently unknown to the Plaintiff.

5. More than thirty (30) days have elapsed since the occurrence of the violations hereinabove mentioned, and the persons from whom such excess rental payments were demanded, accepted or received have not instituted any action under Section 205 of the Housing and Rent Act of 1947, as amended for said violations.

Wherefore, the Plaintiff demands and prays:

1. That an injunction be issued enjoining the defendants, their attorneys, agents, employees and servants and all other persons in active concert or participation with the defendants from directly or indirectly demanding, accepting or receiving rents in excess of the maximum rents established by any Regulation or Order heretofore or hereafter adopted, pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or extended, or superseded, or from engaging in acts and practices which constitute or will constitute a violation of any of the provisions of the Housing and Rent Act of 1947, as amended, or extended or superseded, or of the Rent Regulations issued pursuant thereto.

2. That the defendant be ordered and directed to pay to the Treasurer of the United States, for and on behalf of all persons entitled thereto, a refund of all amounts (the amount presently ascertained by the Plaintiff being the sum of Five Thousand Sixty-six and 49/100 Dollars (\$5,066.49) in excess of the lawful maximum rents which have been or



may be demanded, accepted or received by the defendants from any tenants for or in connection with the use or occupancy of the housing accommodations hereinbefore mentioned; or, in the alternative, that the defendants be ordered and directed to pay the amounts in excess of the lawful maximum rents as hereinabove prayed, to the Treasurer of the United States.

3. That judgment for the Plaintiff be granted herein for Four Thousand Nine Hundred Seventy and 25/100 Dollars (\$4,970.25), being three times the amount by which the rents demanded, accepted or received by the defendants within one year prior to the date of the commencement of this action, excluding, however, the thirty (30) days immediately prior to the date of the commencement of this action, exceeded the legal maximum rent.

4. That such other, different or further relief to which Plaintiff may be entitled be granted, or other relief be accorded which the Court may find necessary to effectuate the purposes of the said Act as now existing, or as hereafter amended or superseded, and of any orders or regulations issued thereunder.

5. That Plaintiff recover the costs of this action.

Dated this 24th day of February, 1950.

/s/ RAYMOND J. FOX,

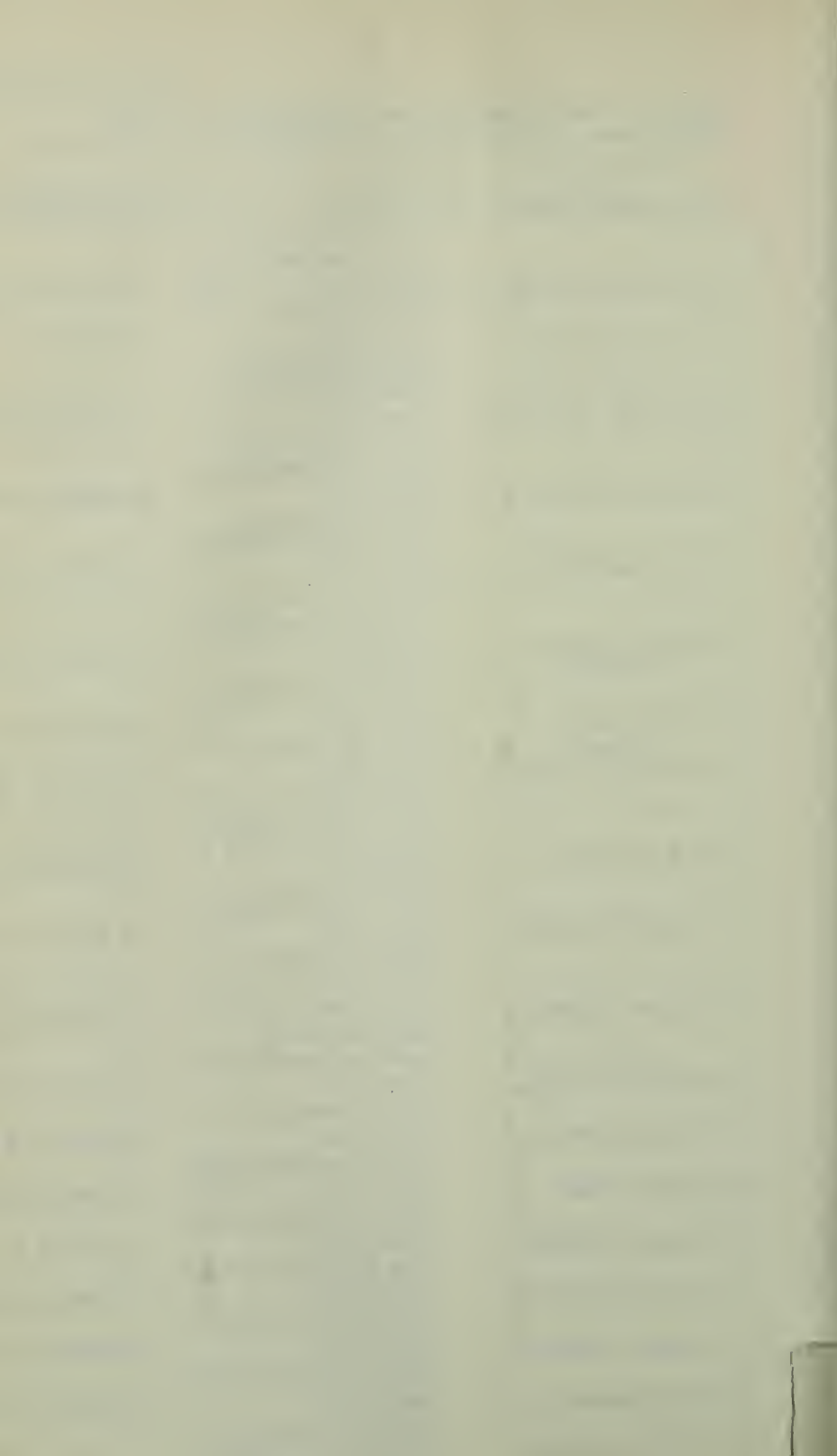
Attorney for Plaintiff, Office  
of Housing Expediter.

## EXHIBIT A

Henry T. Taomora and Charles S. Lee and Carol W. Lee  
1550 Fillmore St., San Francisco, California

## SCHEDULE

Tenant	Unit	Date Rented	Rent Collected	Maximum Legal Rent	Number of Over- Charges	Amount of Each Overcharge	Overcharge to Each Tenant	Amount Subject to Trespass Damages
1(a) Frank T. Hara.....	Apt. 305 1550 Fillmore St. San Francisco, Calif.	4/23/47 to 6/30/47	\$40 per Mo.	\$4.50 per Wk. (or \$19.50 Mo.)	2 1/4	\$20.50	\$46.12	.....
1(b) Frank T. Hara.....	Apt. 305 1550 Fillmore St. San Francisco, Calif.	Bonus demanded as condition precedent to renting apartment				\$100.00	\$100.00	.....
1(c) Robert Kiyota .....	Apt. 306 1550 Fillmore St. San Francisco, Calif.	5/10/47 to 6/30/47	\$10.00 per Wk.	\$6.50 per Wk.	7	\$ 3.50	\$ 24.50	.....
1(d) George Komatsu .....	Apt. 309 1550 Fillmore St. San Francisco, Calif.	2/ 3 47 to 6/30/47	\$40.00 per Mo.	\$19.50 per Mo.	5	\$ 20.50	\$102.50	.....
1(e) Grace Miyamoto .....	Apt. 409 1550 Fillmore St. San Francisco, Calif.	12 8/46 to 6/30/47	\$10.00 per Wk.	\$22.50 per Mo. (or \$5.25 Wk.)	16	\$ 4.75	\$ 76.00	.....
1(f) Lillian Hiraiiki .....	Apt. 407 1550 Fillmore St. San Francisco, Calif.	2/ 8/47 to 6/30/47	\$40.00 per Mo.	\$5.50 per Wk. (or \$24.00 Mo.)	4 1/2	\$ 16.00	\$ 75.00	.....
1(g) Mrs. Harumi Kameda .....	Apt. 503 1550 Fillmore St. San Francisco, Calif.	12/ 4/46 to 6/30/47	\$50. per Mo.	\$40.00 per Mo.	7	\$ 10.00	\$ 70.00	.....
1(h) Mrs. Harumi Kameda .....	Apt. 503 1550 Fillmore St. San Francisco, Calif.	Bonus demanded as condition precedent to renting apartment				\$250.00	\$250.00	.....
2(a) Frank T. Hara .....	Apt. #305 1550 Fillmore St. San Francisco, Calif.	7/ 1/47 to 9/23/47	\$40.00 per Mo.	\$4.50 per Wk. (\$19.50 Mo.)	2 3/4	\$ 20.50	\$ 56.37	.....
2(b) Sam Sakuda .....	Apt. #305 1550 Fillmore St. San Francisco, Calif.	3/15/48 to 12/24/49	\$10.00 per Wk.	\$4.50 per Wk.	92	\$ 5.50	\$506.00	.....
2(c) Robert Kiyoti .....	Apt. #306 1550 Fillmore St. San Francisco, Calif.	7/ 1/47 to 2/28/49	\$10.00 per Wk.	\$6.50 per Wk.	86	\$ 3.50	\$301.00	.....
2(d) Chas. Masada .....	Apt. #306 1550 Fillmore St. San Francisco, Calif.	4/ 6/49 to 12/ 6/49	\$45.00 per Mo.	\$6.50 per Wk. (or \$28.00 Mo.)	8	\$ 17.00	\$136.00	.....
(e) Geo K. Komatsu .....	Apt. #309 1550 Fillmore St. San Francisco, Calif.	7/ 1/47 to 1/ 1/49	\$40.00 per Mo.	\$19.50 per Mo.	18	\$ 20.50	\$369.00	.....
(f) Kozutami Tani .....	Apt. #401 1550 Fillmore St., S. F.	2, 12/49 to 9/ 9/49	\$48.00 per Mo.	\$7.50 per Wk. (or \$32.00 Mo.)	7	\$ 16.00	\$112.00	.....
(g) Marian Tani .....	Apt. #401 1550 Fillmore St., S. F.	9/ 9/49 to 12/17/49	\$45.00 per Mo.	\$7.50 per Wk. (\$32.00 Mo.)	3 1/4	\$ 13.00	\$ 42.00	.....
(h) Grace Miyamoto .....	Apt. #409 1550 Fillmore St., S. F.	7/ 1/47 to 4/23/48	\$10.00 per Wk. (or \$42.00 Mo.)	\$22.50 per Mo.	9 3/4	\$ 19.50	\$188.50	.....
(i) Henry Yoshida .....	Apt. #403 1550 Fillmore St., S. F.	8/ 8/49 to 12/ 8/49	\$42.50 per Mo.	\$37.50 per Mo.	4	\$ 5.00	\$ 20.00	.....
(j) Suyuki Vyemura .....	Apt. #404 1550 Fillmore St., S. F.	2, 12/48 to 1/12/50	\$45.00 per Mo.	\$22.50 per Mo.	23	\$ 22.50	\$517.50	.....
(k) Rae Gordon .....	Apt. #406 1550 Fillmore San Francisco, Calif.	4/ 1/49 to 1/ 1/50	\$25.00 per Mo.	\$21.00 per Mo.	9	\$ 4.00	\$ 36.00	.....
2(l) Lillian Hiraiiki .....	Apt. 407 1550 Fillmore St., S. F.	7/ 1/47 to 10/ 7/48	\$40.00 per Mo.	\$5.50 per Wk. (\$24.50 per Mo.)	15 1/4	\$ 16.00	\$244.00	.....
2(m) Aiko Yoshikawa .....	Apt. #501 1550 Fillmore St., S. F.	11 25/48 to 12/25/49	\$48.00 per Mo.	\$7.50 per Wk. (\$32.00 Mo.)	13	\$ 16.00	\$208.00	.....
2(n) Jane Hiwano .....	Apt. 505 1550 Fillmore, S. F.	1 28/48 to 12/28/49	\$45.00 per Mo.	\$7.00 per Wk. (\$30.00 Mo.)	11	\$ 15.00	\$165.00	.....
2(o) Jules R. Kalisch .....	Apt. 507 1550 Fillmore, S. F.	11/24/49 to 12/24/49	\$45.00 per Mo.	\$6.50 per Wk. (\$28.00 per Mo.)	1	\$ 17.00	\$ 17.00	.....
2(p) E. J. Nomura .....	Apt. 510 1550 Fillmore, S. F.	9 1/47 to 6/30/48	\$57.00 per Mo.	\$37.50 per Mo.	10	\$ 19.50	\$105.00	.....
2(q) Daigoro Tani .....	Apt. 510 1550 Fillmore St., S. F.	7/ 1/48 to 1/ 1/50	\$58.00 per Mo.	\$37.50 per Mo.	18	\$ 20.50	\$369.00	.....
2(r) George Ikeda .....	Apt. 511 1550 Fillmore St., S. F.	5/15/48 to 1/15/50	\$48.00 per Mo.	\$22.50 per Mo.	20	\$ 25.50	\$510.00	.....
2(s) Winifred Kim Miriam Tani .....	Apt. 513 1550 Fillmore St., S. F.	11 6/47 to 9/ 5/49	\$43.00 per Mo.	\$7.00 per Wk. (\$30.00 Mo.)	22	\$ 15.00	\$330.00	.....
3(a) Sam Sakuda .....	Apt. #305 1550 Fillmore St., S. F.	3/ 1/49 to 12/24/49	\$10.00 per Wk.	\$4.50 per Wk.	42	\$ 5.50	\$231.00	.....
3(b) Chas. Masada .....	Apt. 306 1550 Fillmore St., S. F.	4/ 6/49 to 12/ 6/49	\$45.00 per Mo.	\$6.50 per Wk. (\$28.00 per Mo.)	8	\$ 17.00	\$136.00	.....
3(c) Kazutami Tani .....	Apt. #401 1550 Fillmore St., S. F.	3 1/49 to 7/ 1/49	\$48.00 per Mo.	\$7.50 per Wk. (\$32.00 Mo.)	6	\$ 16.00	\$ 96.00	.....
3(d) Miriam Tani .....	Apt. 401 1550 Fillmore St., S. F.	9 9/49 to 12 9/49	\$45.00 per Mo.	\$7.50 per Wk. (\$32.00 Mo.)	3	\$ 12.00	\$ 39.00	.....
(e) Henry Yoshida .....	Apt. #403 1550 Fillmore St., S. F.	8 8/49 to 12/ 8/49	\$42.50 per Mo.	\$37.50 per Mo.	4	\$ 5.00	\$ 20.00	.....
(f) Suyuki Vyemura .....	Apt. #404 1550 Fillmore St., S. F.	3 1/49 to 1/ 1/50	\$45.00 per Mo.	\$22.50 per Mo.	10	\$ 22.50	\$225.00	.....
(g) Rae Gordon .....	Apt. #406 1550 Fillmore St., S. F.	4 1/49 to 1/ 1/50	\$25.00 per Mo.	\$21.00 per Mo.	9	\$ 4.00	\$ 36.00	.....
(h) Aiko Yoshikawa .....	Apt. 501 1550 Fillmore St., S. F.	3 1/49 to 12/ 1/49	\$48.00 per Mo.	\$7.50 per Wk. (\$32.00 Mo.)	9	\$ 16.00	\$144.00	.....
(i) Jane Hiwano .....	Apt. 505 1550 Fillmore St., S. F.	3 1/49 to 12/28/49	\$45.00 per Mo.	\$7.00 per Wk. (\$30.00 per Mo.)	10	\$ 15.00	\$150.00	.....
(j) Jules R. Kalisch .....	Apt. #507 1550 Fillmore St., S. F.	11 24/49 to 12/24/49	\$45.00 per Mo.	\$6.50 per Wk. (or \$28.00 Mo.)	1	\$ 17.00	\$ 17.00	.....
(k) Daigoro Tani .....	Apt. #510 1550 Fillmore St., S. F.	3 1/49 to 1/ 1/50	\$58.00 per Mo.	\$37.50 per Mo.	10	\$ 20.50	\$205.00	.....
(l) George Ikeda .....	Apt. #511 1550 Fillmore St., S. F.	3 1/49 to 1/ 1/50	\$48.00 per Mo.	\$22.50 per Mo.	10 1/2	\$ 25.50	\$267.75	.....
(m) Winifred Kim Miriam Tani .....	Apt. #512 1550 Fillmore St., San Francisco, Calif.	3 1/49 to 9/ 1/49	\$45.00 per Mo.	\$7.00 per Wk. (\$30.00 Mo.)	6	\$ 15.00	\$ 90.00	.....





United States District Court for the Northern  
District of California, Southern Division  
No. 29527

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

HENRY T. TANIMURA et al.,  
Defendants.

AMENDMENTS TO COMPLAINT FOR IN-  
JUNCTION, RESTITUTION AND TREBLE  
DAMAGES

The complaint for Injunction, Restitution and Treble Damages, instituting the above-entitled action and filed on February 28, 1950, with the Clerk of the United States District Court at San Francisco, California, is hereby amended as follows:

1. Paragraph 5 of Count II is hereby amended so as to insert on line 4, after the word "Exhibit 'A'" the words "and Items 1(a) and 1(b) of Schedule marked Exhibit 'B'."

2. Paragraph 2 of the prayer of said complaint is hereby amended so as to delete from line 4 the words "Five Thousand, Sixty-six and 49/100 Dollars (\$5,066.49)" and to insert in lieu thereof the words and figures "Five Thousand One Hundred, Forty-five and 79/100 Dollars (\$5,145.79)."

Dated this 8th day of May, 1950.

/s/ RAYMOND J. FOX,

Litigation Attorney, Office of  
Housing Expediter.





## EXHIBIT B

## SCHEDULE

Tenant	Unit	Date Rented	Rent Collected	Maximum Legal Rent	Number of Over- Charges	Amount of Each Overcharge	Overcharge to Each Tenant	Amount Subject To Treble Dam.
Item 1								
(a) Sumi Endo .....	Apt. #507 1550 Fillmore St., S. F.	10/ 1/48 to 11/30/48	\$45.00 Mo.	\$6.50 Wk. (\$28.00 Mo.)	2	\$17.00	\$34.00	.....
(b) Sumi Endo .....	Apt. #304 Same Address	12/ 1/48 to 2/20/49	\$45.00 Mo.	\$6.50 Wk. (\$28.00 Mo.)	2 $\frac{2}{3}$	\$17.00	\$45.30	.....

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 10, 1950.

[Title of District Court and Cause.]

## ANSWER AND COUNTERCLAIM

Comes now the Defendant, Henry T. Tanimura, by his attorneys, C. Dan Lange and Clyde R. Rockwell, and for an answer to the complaint herein states as follows:

As and for Answer to the First Cause of Action  
Called Count I Herein

### First Defense

Defendant admits the allegations contained in Paragraph 4 of Count I of the Complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of said count of said complaint and denies each and every, all and singular, other allegations contained in said count and said complaint.

### Second Defense

Count I of the complaint fails to state a cause of action which entitles the Plaintiff to any relief whatsoever or at all.

### Third Defense

The right of action set forth in Count I of the complaint did not accrue within one year before the commencement of this action.

### Fourth Defense

That the right of action set forth in Count I of the complaint is barred by laches.

As and for Answer to the Second Cause of Action  
Called Count II Herein

First Defense

Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Count II of the complaint; and denies each and every, all and singular, other allegations contained in said count and said complaint and specifically denies that the premises described in the complaint and more commonly known and described as the Anglo Hotel, are controlled housing accommodations and in this respect alleges that said premises was at all times mentioned in said count and now is a hotel within the meaning of the Housing and Rent Act of 1947 (50 U.S.C.A. App., 1892).

Second Defense

Count II of the complaint fails to state a cause of action which entitles the Plaintiff to any relief whatsoever or at all.

Third Defense

The right of action set forth in Count II of the complaint did not accrue within one year next before the commencement of this action.

Fourth Defense

That the right of action set forth in Count II of the complaint is barred by laches.

## Fifth Defense

That the premises described in the complaint and more commonly known and described as the Anglo Hotel, was at all times mentioned in Count II and now is a hotel within the meaning and intent of the Housing and Rent Act of 1947 (50 U.S.C.A. App., 1892).

As and for Answer to the Third Cause of Action  
Called Count III Herein

## First Defense

Defendant admits the allegations contained in Paragraph 2 of Count III of the complaint; and denies each and every, all and singular, other allegations contained in said count and said complaint and specially denies that the premises described in said complaint, and more commonly known and described as the Anglo Hotel, are controlled housing accommodations and in this respect alleges that the premises was at all times mentioned in said count and now is a hotel within the meaning of the Housing and Rent Act of 1947 as amended (50 U.S.C.A. App., 1892).

## Second Defense

Count III of the Complaint fails to state a cause of action which entitled Plaintiff to any relief whatsoever or at all.

## Third Defense

That the effective date of the 1949 amendment to the Housing and Rent Act of 1947 as amended is



the 1st day of April, 1949, and the Plaintiff cannot recover treble damages for violations of the Housing and Rent Act of 1947, as amended prior to said effective date of said amendment.

#### Fourth Defense

That the premises described in the complaint and more commonly known and described as the Anglo Hotel, was at all times mentioned in Count III and now is a hotel within the meaning and intent of the Housing and Rent Act of 1947 as amended (50 U.S.C.A., 1892):

#### Fifth Defense

That if it is found that there were overcharges of rent by this answering Defendant resulting in violation of the Housing and Rent Act of 1947 as amended and as alleged in Plaintiff's complaint, said violations were neither wilful nor the result of failure to take practicable precaution against the occurrence of such violations of the Housing and Rent Act of 1947 as amended.

Wherefore, Defendant denies that Plaintiff is entitled to the relief prayed for in the complaint, or any part thereof, or to any other relief against this answering Defendant, and prays that the complaint be dismissed with costs.

#### Counterclaim

By way of counterclaim arising out of the transactions which is the subject matter of Plaintiff's claim, Defendant, Henry T. Tanimura, by his attor-



neys, C. Dan Lange and Clyde R. Rockwell, avers as follows:

I.

That Defendant now is the proprietor of the premises located at 1550 Fillmore Street in the City and County of San Francisco, State of California, and commonly known and described as the Anglo Hotel.

II.

That Plaintiff unreasonably claims and alleges as is more fully set forth in its complaint herein that said hotel premises are controlled housing accommodations with maximum legal rent ceilings within the provisions of the Housing and Rent Act of 1947 and as said Act was and is amended.

III.

That by Section 202 of the Housing and Rent Act of 1947 and as said Act and section was and now is amended, said hotel premises are not controlled housing accommodations.

IV.

That on or about the 18th day of November, 1949, Defendant requested that said hotel premises be declared decontrolled by the San Francisco Bay Defense Rental Area Director, and that the San Francisco Bay Defense Rental Area Director refused to rule on Defendant's request.

V.

That Plaintiff's wrongfully claiming that said hotel premises are controlled housing accommoda-

tions has caused Defendant irreparable harm in that it has depreciated the value of said hotel premises as hotel property.

Wherefore, Defendant prays that the hotel premises located at 1550 Fillmore Street in the City and County of San Francisco, State of California, and commonly known and described as the Anglo Hotel, be decreed to be hotel premises by way of declaratory judgment within the provisions of the Housing and Rent Act of 1947 and as such not controlled housing accommodations and as said Act was and now is amended, and for such other and further relief as to the Court seems just and proper.

LANGE AND ROCKWELL,

Attorneys for

Henry T. Tanimura.

By /s/ CLYDE R. ROCKWELL.

[Endorsed]: Filed August 31, 1950.

---

[Title of District Court and Cause.]

#### DEMAND FOR JURY TRIAL

Comes now the Defendant, Henry T. Tanimura, by his attorneys, and respectfully demands the Court to order a jury trial of the issues in the above-entitled action pursuant to the authorization given under Rules 38 and 39 of the Federal Rules of Civil Procedure.

Dated this 28th day of August, 1950, at San Francisco, California.

LANGE & ROCKWELL,

By /s/ CLYDE R. ROCKWELL,  
Attorneys for Defendant.

[Endorsed]: Filed August 31, 1950.

---

[Title of District Court and Cause.]

NOTICE OF MOTION, MOTION TO STRIKE  
JURY DEMAND, POINTS AND AU-  
THORITIES

Notice of Motion

To the Above-Named Defendants and Their Attorneys, Lange & Rockwell, 200 Bush Street, San Francisco 4, California:

Please Take Notice that the undersigned will bring the following motion on for hearing before this Court in the United States Post Office Building, Seventh and Mission Streets, San Francisco, California, at 10:00 a.m. on the 9th day of October, 1950, or as soon thereafter as counsel can be heard:

MOTION TO STRIKE JURY DEMAND

The Plaintiff hereby moves the Court to strike the demand for jury trial recently made by the Defendant in this cause, on the ground that no right of trial by jury of the issues here involved exists under the Constitution or Statutes of the United States.

## Points and Authorities

1. Rule 39(a) of the Federal Rules of Civil Procedure provides in material part that:

“When trial by jury has been demanded \* \* \* the trial of all issues so demanded shall be by jury, unless \* \* \* the court upon motion or of its own initiative finds that a right of trial by jury of some or all of the issues does not exist under the Constitution or Statutes of the United States.”

2. The overwhelming majority of pertinent court decisions hold that no right of trial by jury exists under the Constitution or statutes of the United States for cases such as the present one, brought up by the United States under the Housing and Rent Act of 1947 as amended, for equitable relief and statutory damages.

For example, as Chief Judge Sweeney of the United States District Court for the District of Massachusetts said in a memorandum opinion dated October 6, 1949, in *United States v. Shaughnessy* (Civil Action No. 8355),

“This action was brought by the United States, based upon an alleged overcharge by the defendant of monthly rentals in violation of the Housing and Rent Act of 1947, 50 U.S.C.A., App. 1895, et seq. The Government seeks injunctive relief against the defendant, and demands the statutory damages for the alleged violations. The damages sought are in the nature of a penalty when sued for by the

United States, and this right to sue exists only where the tenant himself has failed to bring his action. It is essentially what would be an old action in equity and, as such, is triable before a court without a jury. *Pallant v. Sinatra, et al.*, 59 F. Supp. 684; *Arnstein v. Twentieth Century Fox Film Corporation, et al.*, 3 F.R.D. 58. See *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48, where the court stated that the right to a trial by jury has no application to cases where a recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law, and cases cited there."

Other District Courts have reached the same conclusion in the following cases:

*United States v. Osipoff, etc.*,

(Civil Action No. 1106—S.D., Cal.) Aug. 8, 1949.

*United States v. Cherico*,

(Civil Action No. 7848—W.D., Pa.) Dec. 5, 1949.

*United States v. Caldwell*,

(Civil Action No. 4387—W.D., N. Y.) Jan. 23, 1950.

*United States v. Stein*,

(Civil Action No. 3212—M.D., Pa.) Feb. 20, 1950.

*United States v. Max Friedman, et al.*,

(Civil Actions Nos. 1-24, 25, 26—S.D., Iowa) April 11, 1950.



United States v. Kennedy,  
(Civil Action No. 803—Nevada) April. 19,  
1950.

United States v. Sicherer,  
(Civil Action No. 805—Nevada) Apr. 19,  
1950.

United States v. Kenter,  
(Civil Action No. 29522—N.D., Calif.) May  
16, 1950.

United States v. Barrett,  
(Civil Action No. 9749—E.D., Pa.) June  
21, 1950.

United States v. Inwood,  
(Civil Action No. 29516—N.D., Calif.)  
Aug. 14, 1950.

To the same effect, under the comparable provisions of the Emergency Price Control Act of 1942, as amended, (50 U.S.C.A., App. 901 et seq.), are:

Creedon v. Arielly,  
(Civil Action No. 3351—W.D., N.Y.) 8  
F.R.D. 265; 11 Federal Rules Service  
56c41, Case 11

Woods v. Endekay Realty Corp.  
(Civil Actions #44-302, #43-704 S.D.,  
N.Y.)

United States v. Hall,  
(Civil Action No. 998-NC)

Contra: United States v. Jepson,  
(Civil Action No. 561-49—N.J.)

Careful review of all available references shows the only decisions to the contrary to be:

United States v. Hart,

86 F. Supp. 787 (W.D. Va.)

United States v. Strymish,

86 F. Supp. 999 (Mass.)

United States v. Elaine Friedman,

(Civil Action No. 2821-Conn.) Apr. 24, 1950

In the opinion of the Plaintiff, the foregoing cases cited in its favor, particularly United States v. Shaughnessy, are not only more representative of judicial opinion throughout the United States, but more soundly reasoned than those to the contrary.

Wherefore, pursuant to Rule 39(a) of the Federal Rules of Civil Procedure and the cited precedents, Plaintiff submits that the Defendant's demand for jury trial of this cause should be denied by the Court.

Dated this 28th day of September, 1950.

/s/ WM. B. SPOHN,

Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 28, 1950.

District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 9th day of October, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Michael J. Roche,  
District Judge.

[Title of Cause.]

This case came on regularly this day for hearing on motion to strike jury demand and motion to dismiss counterclaim. After hearing respective counsel, it is Ordered that said motions be granted.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled cause was commenced on February 28, 1950, the Plaintiff seeking restitution under the Emergency Price Control Act of 1942 as amended (50 U.S.C.A. App. 901 et seq.), and treble damages, injunction and restitution under the Housing and Rent Act of 1947 as amended (50 U.S.C.A. App. 1881 et seq.). Personal service of the complaint and summons as required by the Federal Rules of Civil Procedure was made upon the De-



fendant Henry T. Tanimura on March 8, 1950, by a Deputy United States Marshal, who reported that service could not be made on the other Defendants Charles S. Lee and Carol W. Lee, since they had moved to Hawaii.

The complaint was later amended on May 10, 1950, the Plaintiff seeking additional restitution and damages under the Housing and Rent Act. A copy of the amendment was duly served upon the Defendant Tanimura and his counsel.

Thereafter, on August 14, 1950, the motion of the Defendant Tanimura to dismiss, to strike, and to make more definite, was heard and denied in its entirety by this Court, the Honorable Louis E. Goodman, Judge presiding. On October 9, 1951, the motions of the Plaintiff to strike the jury demand and to dismiss the counterclaim filed by the Defendant Tanimura were heard and granted by this Court, the Honorable Michael J. Roche, Judge presiding. The motion of the Plaintiff to dismiss the cross-complaint filed by the Defendant Tanimura was similarly heard on January 15, 1951, by this Court, the Honorable George B. Harris, Judge presiding, and granted January 30, 1951.

Following answers by the Defendant Tanimura to the complaint as amended, and to the request for admissions and interrogatories served by the Plaintiff, and answer by the Plaintiff to the request for admissions served by the Defendant Tanimura, the cause came regularly on for trial on February 9 and 12, 1951, before this Court, the Honorable Michael J. Roche, Judge presiding, and the Plain-

tiff appearing by its counsel William B. Spohn and the Defendant Tanimura appearing in person and by his counsel C. Dan Lange and Clyde R. Rockwell. Upon oral motion by counsel for the Plaintiff based on the aforesaid lack of service, the action was dismissed without prejudice as to the Defendants Charles S. Lee and Carol W. Lee. Evidence both oral and documentary was introduced by and on behalf of the remaining parties and oral arguments made by counsel. At the conclusion of trial and upon submittal, the Court, being fully advised in the premises, gave oral judgment for the Plaintiff in the form of an injunction, restitution of overcharges on behalf of the tenants, and costs, but refused to award damages to the Plaintiff.

Thereafter, Plaintiff moved the Court to reconsider its refusal to award damages. This motion was heard on March 5 and 12, 1951, before the Court, the Honorable Michael J. Roche, Judge presiding, and the parties appearing by the counsel aforementioned. Upon conclusion of the hearing and submittal, the Court modified its previous oral judgment and awarded Plaintiff damages in the amount of the overcharges which had occurred within one year immediately preceding the institution of this action.

Wherefore, the Court makes the following:

#### Findings of Fact

(1) That the housing accommodations described in the complaint as amended are located within the San Francisco Bay Defense-Rental Area.

(2) That on June 30, 1947, the establishment in which the housing accommodations are located was not commonly known as a hotel in the community, nor were the occupants thereof provided customary hotel services.

(3) That the maximum legal rents prescribed for the housing accommodations under the aforesaid Acts and the Regulations issued pursuant thereto were as specified in the complaint as amended during the periods of time material to this action.

(4) That during such periods of time, the Defendant Tanimura did demand, accept, and receive the following amounts in excess of the legal maximum rents from the named tenants for and in connection with the housing accommodations:

Frank T. Hara.....	\$ 35.87
Stanley Sakuda.....	660.00
Robert Kiyota.....	287.00
Chas. Masada.....	204.00
Geo. K. Komatsu.....	594.50
Kazutami Tani.....	112.00
Mariam Tani.....	207.00
Grace Miyamoto.....	273.00
Henry Yoshida.....	20.00
Suyiki Vyemura .....	517.50
Rae Gordon.....	60.00
Lillian Hiraiki.....	228.00
Aiko Yoshikawa.....	384.00
Jane Hiwano Yamasaki.....	165.00
Jules R. Kalisch.....	17.00
E. J. Nomura.....	195.00
Daigaro Tani.....	594.50

George Ikeda.....	465.50
Winifred Kim.....	165.00
Sumi Endo.....	68.00
Harumi Kameda.....	410.00

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Total .....\$5,662.87

(5) That no action has been instituted by any of the named tenants under either of the aforesaid Acts on account of the overcharges here involved, and more than thirty (30) days have elapsed since the last such overcharge.

(6) That a total of One Thousand Six Hundred Seventy-seven and 50/100 Dollars (\$1,677.50) of the aforesaid overcharges occurred within one year immediately preceding the institution of this action.

#### Conclusions of Law

(1) That the Court has jurisdiction of the subject-matter of this action and of the remaining parties under each of the aforesaid Acts.

(2) That the housing accommodations in question were during all times material to this action controlled under the aforesaid Acts and the Regulations issued pursuant thereto.

(3) That during all such times, the maximum legal rents prescribed for the housing accommodations under the Acts and Regulations were as specified in the complaint as amended.

(4) That the Defendant Tanimura violated the Acts and Regulations by demanding, accepting, and receiving the excess amounts specified in the foregoing Findings of Fact.

(5) That the Plaintiff on account of said violations is entitled to have and recover damages from the Defendant Tanimura in the total amount of One Thousand Six Hundred Seventy-seven and 50/100 Dollars (\$1,677.50) as aforesaid.

(6) That the Plaintiff on account of said violations is entitled to an injunction against any further violations by the Defendant Tanimura under the aforesaid Housing and Rent Act and Regulations as prayed for in the complaint as amended.

(7) That the Plaintiff on account of said violations is entitled to a judgment and decree requiring and directing the Defendant Tanimura to refund forthwith to the Plaintiff on behalf of the aforesaid tenants, or in the alternative to the Plaintiff on its own behalf in the event any of said tenants cannot be located after appropriate effort, the excess amounts demanded, accepted, and received by the Defendant Tanimura in the total amount of Five Thousand Six Hundred Sixty-two and 87/100 (\$5,662.87).

(8) That the Plaintiff is entitled to its costs in this action.

Let judgment be entered in accordance herewith.

Dated this 13th day of April, 1951.

/s/ MICHAEL J. ROCHE,

United States District Judge.

[Lodged]: April 9, 1951.

[Endorsed]: Filed April 13, 1951.



United States District Court for the Northern  
District of California, Southern Division

No. 29527

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HENRY T. TANIMURA,  
Defendant.

### JUDGMENT AND DECREE

Findings of Fact and Conclusions of Law having been filed in the above-entitled cause,

Wherefore, by reason of the law, the pleadings, and the premises contained in said Findings and Conclusions.

It Is Hereby Ordered, Adjudged, and Decreed that the Defendant Henry T. Tanimura, his attorneys, agents, servants, employees and all other persons in active concert or participation with the Defendant, be and they are hereby permanently enjoined and restrained from directly or indirectly demanding, accepting, or receiving rents in excess of the maximum rents established by any regulation or order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or from engaging in any other acts or practices which violate the said Act or any regulation or order adopted pursuant thereto.

It Is Further Ordered, Adjudged, and Decreed that the Defendant be and he is hereby required and directed to forthwith make restitution to the Plain-

tiff on behalf of the following named tenants, or in the alternative to the Plaintiff on its own behalf in the event any of said tenants cannot be located after appropriate effort, for the overcharges in the rental of the housing accommodations specified in this cause in the following sums, with interest at the rate provided by law:

Frank T. Hara.....	\$ 35.87
Stanley Sakuda.....	660.00
Robert Kiyota.....	287.00
Chas. Masada.....	204.00
Geo. K. Komatsu.....	594.50
Kazutami Tani.....	112.00
Mariam Tani.....	207.00
Grace Miyamoto.....	273.00
Henry Yoshida.....	20.00
Suyiki Vyemura .....	517.50
Rae Gordon.....	60.00
Lillian Hiraiki.....	228.00
Aiko Yoshikawa.....	384.00
Jane Hiwano Yamasaki.....	165.00
Jules R. Kalisch.....	17.00
E. J. Nomura.....	195.00
Daigaro Tani.....	594.50
George Ikeda.....	465.50
Winifred Kim.....	165.00
Sumi Endo.....	68.00
Harumi Kameda .....	410.00

---

Total .....\$5,662.87

It Is Further Ordered, Adjudged, and Decreed that the Plaintiff do have and recover of and from

the Defendant the sum of One Thousand Six Hundred Seventy-seven and 50/100 Dollars (\$1,677.50), to be paid forthwith as damages for the violations of the Act and Regulations involved in the afore-said overcharges occurring within one year immediately preceding the institution of this action, with interest at the rate provided by law.

It Is Further Ordered, Adjudged, and Decreed that the Plaintiff do have and recover of and from the Defendant its costs in the amount of Eighty-two Dollars and Forty-six Cents (\$82.46), to be taxed by the Clerk and paid forthwith by the Defendant.

It Is Further Ordered, Adjudged, and Decreed that all payments made pursuant to this judgment and decree shall be made to the Treasurer of the United States at the Litigation Section of the Office of the Housing Expediter, Room 712, Pacific Building, 821 Market Street, San Francisco 3, California.

Dated this 13th day of April, 1951.

/s/ MICHAEL J. ROCHE,  
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1951.

[Entered]: April 16, 1951.



[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Henry T. Tanimura, Defendant above named, hereby appeals to the Court of Appeals for the Ninth Circuit from the orders denying him a jury trial and from the final decree and judgment entered in this action on the 16th day of April, 1951.

Dated: This 11th day of June, 1951.

LANGE & ROCKWELL,  
Attorneys for Appellant.

By /s/ CLYDE R. ROCKWELL.

[Endorsed]: Filed June 14, 1951.

In the Southern Division of the United States District Court for the Northern District of California

No. 29527

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY T. TANIMURA, CHARLES S. LEE, and  
CAROL W. LEE,

Defendants.

Before: Hon. Michael J. Roche,  
Judge.

MOTION TO STRIKE JURY DEMAND,  
MOTION TO DISMISS COUNTERCLAIM

REPORTER'S TRANSCRIPT

Monday, October 9, 1950

Appearances:

For the Plaintiff:

WILLIAM B. SPOHN, ESQ.

For the Defendants:

C. DAN LANGE, and

CLYDE R. ROCKWELL, by

CLYDE R. ROCKWELL, ESQ.

The Clerk: United States vs. Tanimura, motion to strike jury demand, motion to dismiss counterclaim.

Mr. Spohn: Your Honor please, this matter arises under the Housing and Rent Act of 1947. Before the Court this morning are two motions filed by the plaintiff, first, to strike the jury demand which has been made by the defendant, the second to dismiss the counterclaim which the defendant has made against the plaintiff in answer.

As to the motion to strike jury demand, points and authorities are set forth in some detail in the memorandum attached to our motion. In brief, we move to strike the jury demand on the ground that no right of trial by jury of the issues involved in a case of this sort exists under the Constitution or the statutes of the United States. In support of our position we have cited not only Rule 39(a) of the Rules but all of the pertinent court decisions on the matter, with particular reference to the previous decisions of this Court and also a decision by Chief Judge Sweeney of the United States District Court for the District of Massachusetts, a pertinent excerpt of which is set forth in our memorandum. In brief, we are prepared to submit it on the strength of the memorandum we have so submitted.

The Court: I would like to hear from the other side.

Mr. Rockwell: This complaint on file herein, your Honor, is a complaint in three counts. One count is on the Emergency Price Control Act of 1942; one count is on the Housing and Rent Act of 1947; and one count is for treble damages within

the period of one year prior to the filing of the action under the Rent and Housing Act of 1947.

As to the first count, our contention is that it is a straight action for money. It is called restitution. Well, restitution in common law was an action for money, and we contend that under a determination of the revision of the Emergency Price Control Act of 1942, Congress provided that the Act was to be terminated, except that as to offenses committed, or rights and liabilities incurred prior to the termination date of this Act in such regulations shall continue. Well, it doesn't mean—it means that rights for recovery of money damages shall continue, but not rights to enforce the Act. The Act has terminated, and therefore the action is not an action at law for money and there is not right for an injunction.

The Court: How much money is involved?

Mr. Rockwell: We have about \$10,000 involved in the three counts. The second count is an action for an injunction and restitution and they are clearly entitled—we are not entitled to a jury trial on that count.

The third count is an action for treble damages and under the points and authorities cited by counsel, he states that Chief Judge Sweeney states the proper proposition. Well, I agree with him that the Judge recognizes, at least, that the damages sought are in the nature of a penalty, and if they are a penalty we are entitled to a jury trial.

The Court: Judge Sweeney said no.

Mr. Rockwell: Well, Judge Sweeney did say no,

but if it is a penalty we are entitled to a jury trial. It is an action at law. The Supreme Court held under the Emergency Price Control Act in the Porter case, which is the leading case, that as to treble damages it is a penalty and it is an action at law and we take the position if it is an action at law we are entitled to a jury trial.

The Court: Was this a jury trial?

Mr. Rockwell: This was an equitable action.

The Court: You can't find a jury trial, can you?

Mr. Rockwell: Well, yes, of the recorded decisions, there are three recorded decisions on this and two decisions granted jury trials.

The Court: Briefly, what are the facts? You are familiar with the cases, familiarize the Court with them.

Mr. Rockwell: Each case is a case under the Emergency—I mean Housing and Rent Act of 1947, and there are two parts of them, each decision, I believe. They hold, one part they hold restitution for the period past a year and for a year and over the Government wants treble damages. In two of the decisions it was decided the Government was entitled to—I mean, defendant was entitled to a jury trial. In one of the recorded decisions he wasn't entitled to a jury trial. Now, these are District Court decisions. They list about eight or nine decisions holding they are entitled to a jury trial.

The Court: Now, the case you cited, what was the final determination of that, what did the jury do?

Mr. Rockwell: I do not know, your Honor.

The Court: You do not know.



Mr. Spohn: I can supply that answer, your Honor. In *United States vs. Harding*, the United States was sustained, the jury decided in favor of the plaintiff on the pleadings and what had been submitted. In other words, although there was a jury trial granted the plaintiff prevailed.

Mr. Rockwell: Under those facts maybe the plaintiff was entitled to prevail. We contend, having \$10,000 involved in this case, it is a very large establishment, we contend it is a hotel and always contended it is a hotel, and the Government disagrees with us. We feel we should have a jury trial on the issue.

The Court: Well, in order to settle this question, I have met it a number of times, I don't think you are legally entitled to it. I may be in error. I say that kindly. If you think that I am, why, go forward and thresh it out. It has come up a number of times. So far as I am concerned, why, I don't mind having a jury trial, but if we venture out in one case and set a precedent—it has never occurred in this Circuit. I say that kindly.

Mr. Rockwell: I realize that, your Honor.

The Court: Denied.

Mr. Spohn: Your Honor please, the other motion which we have made as plaintiff is to dismiss the counterclaim which the defendant has asserted. Our points and authorities are set forth at some length. There are four points in particular, with all of which the Court is thoroughly familiar.

The Court: I think it is a case of law, we will have to take up that question, dispose of that.

Mr. Rockwell: Your Honor, we would like to at this time allow the Court to dismiss the counterclaim and have leave to file a cross-complaint joining William Bledsoe, I believe, the Area Rent Director, the San Francisco Bay Defense Director; our authority is a Ninth Court decision, 177 Fed. 2nd 125, wherein it was held declaratory relief against the Area Rent Director could be had, a very similar case to this.

The Court: You want me to deny your motion?

Mr. Rockwell: I would suggest having the Court grant the motion to dismiss and allow leave to file a cross-complaint.

The Court: So ordered.

Mr. Rockwell: Thank you, your Honor.

Mr. Spohn: Your Honor, we will not be restricted from opposing that cross-complaint?

The Court: I can't control you, pursue your remedy at law.

Mr. Spohn: We shall do that.

[Endorsed]: Filed July 5, 1951.



[Title of District Court and Cause.]

MOTION, DEMAND FOR JURY TRIAL

REPORTER'S TRANSCRIPT

Friday, February 9, 1951

Appearances:

For the Plaintiff:

WILLIAM B. SPOHN, ESQ.

For the Defendant:

CLYDE R. ROCKWELL, ESQ.

10:00 o'Clock A.M., Friday, February 9, 1951

Mr. Rockwell: And the last motion, a matter which was argued before the Court and I know the Court's attitude on it, is that we still stand on the right to demand a jury trial, and I assume that our demand is denied.

The Court: Denied.

\* \* \*

[Endorsed]: Filed July 11, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court, or true copies of orders entered in this Court, in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint for injunction, etc.

Amendments to complaint.

Answer and counterclaim.

Demand for jury trial.

Notice of motion and motion to strike jury demand.

Order granting motion to strike jury demand.

Findings of fact and conclusions of law.

Judgment and decree.

Notice of appeal.

Designation of record on appeal.

Amended designation of record on appeal.

Reporter's transcript, October 9, 1950.

Reporter's transcript, February 9, 1951 (portion).

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 16th day of July, 1951.

[Seal]

C. W. CALBREATH,  
Clerk.

By /s/ C. M. TAYLOR,  
Deputy Clerk.

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[Endorsed]: No. 13014. United States Court of Appeals for the Ninth Circuit. Henry T. Tanimura, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 16, 1951.

PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals for the  
Ninth Circuit

No. 13014

HENRY T. TANIMURA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STATEMENT OF POINTS AND  
DESIGNATION OF RECORD

Appellant sets forth the following points on which he intends to rely on appeal:

1. The Court erred in sustaining Plaintiff's motion to strike Defendant's demand for trial by jury.

2. The Court erred in refusing to grant to the Defendant a trial by jury.

Appellant states that only the following parts of the record, as filed in this Court, are deemed necessary to be printed for the consideration of the points set forth above:

1. The Complaint;
2. The Amendment to the Complaint;
3. The Answer to the Complaint;
4. The Defendant's jury trial demand;
5. Notice of Motion to strike jury trial demand;
6. Reporter's transcript of proceedings on motion to strike jury trial demand;
7. Order striking jury trial demand;

8. Reporter's transcript of Defendant's motion for trial by jury at commencement of trial proceeding and Court's ruling thereon;

9. Findings of fact and conclusions of law;

10. Judgment and Decree; and

11. Notice of Appeal.

Dated: This 20th day of July, 1951.

LANGE & ROCKWELL,

Attorneys for Appellant.

By /s/ CLYDE R. ROCKWELL.

[Endorsed]: Filed July 23, 1951.